



Federal Communications Commission  
Washington, D.C. 20554

July 19, 2010

In Reply Refer to: 1800B3-BSH/LAS

Northwest Catholic Network, Inc.  
c/o J. Dominic Monahan, Esq.  
Luvaas Cobb  
777 High Street, Suite 300  
Eugene, OR 97401

Family Stations, Inc.  
4135 Northgate, Blvd., Suite 1  
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Re: **AM Broadcast Auction 84  
MX Group 84-130 S-2**

Creswell, Oregon  
Facility ID No. 160171  
File No. BNP-20040129AVD

**Application for New AM Station  
Construction Permit**

KEBR(AM), Arden-Arcade, California  
Facility ID No. 20930  
File Nos. BMJP-20040130ASZ  
BMJP-20051031AEN

**Application for Major Change in  
Licensed AM Station**

Dear Applicants:

We have before us two mutually exclusive ("MX") AM construction permit applications.<sup>1</sup> Northwest Catholic Network, Inc. ("NCN") proposes a new AM station at Creswell, Oregon, and Family Stations, Inc. ("Family") proposes a major change in the licensed facility of noncommercial educational ("NCE") Station

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<sup>1</sup> The third application in MX Group 84-130, filed by Powell Meredith Communications Company (File No. BNP-20040129AIP), a fourth application, filed by Dennis Silver (File No. BNP-20040126AIT), a fifth application, filed by Advance Acquisition, Inc. (File No. BNP-20040128AGM), and a sixth application, filed by Advanced Modulation Broadcasting, LLC (File No. BNP-20040130BDL) were dismissed on January 29, 2007. *See AM Auction No. 84 Mutually Exclusive Applications Dismissed for Failing to File or Untimely Filing of Required Settlement Agreement, Engineering Solution, or Section 307(b) Showing*, Public Notice, 22 FCC Rcd 1055 (MB 2007). A technical resolution for the seventh application, filed by Better Life Ministries (File No. BNP-20051031AAD), was granted on March 4, 2009. An eighth application, filed by Alexandra Communications (File No. BNP-20040127AKF), is the subject of a second settlement in a companion letter. *See infra* n. 7.

KBER(AM), Rocklin, California, to change community of license from Rocklin to Arden-Arcade, California. These two applications were designated MX Group 84-130 S-2 in AM Auction No. 84. We also have before us a Joint Motion for Approval of Settlement ("Joint Request" or "Settlement Agreement"). As discussed below, we dismiss the Settlement Agreement and also dismiss the Family application.

**Background.** On June 15, 2005, the Media Bureau released a *Public Notice* containing a list of 802 MX AM Auction No. 84 window-filed Form 301 tech box applications.<sup>2</sup> The *AM MX Public Notice* defined three categories of MX applications, detailed the filings required for each category, and specified a September 16, 2005, deadline for submitting the required filings to the Commission. This filing deadline was extended to October 31, 2005, because of Hurricane Katrina.<sup>3</sup> MX Group 84-130 was listed as a Category I MX group, eligible for settlement. Category I applicants were required to file a settlement agreement, an engineering solution resolving all mutual exclusivities, or a Section 307(b) showing by the filing deadline.

On October 31, 2005, NCN and Family filed the Settlement Agreement. Under the terms of the Settlement Agreement, Family is to reimburse NCN for its legitimate and prudent expenses in exchange for the withdrawal of its application. The Settlement Agreement contains the affidavits required by Section 73.3525(a) of the Commission's Rules ("Rules").<sup>4</sup> The Settlement Agreement also requests grant of Family's application to modify the license of Station KEBR(AM) to change its community of license to Arden-Arcade, California, and to improve its technical facilities. KEBR(AM) is the sole local transmission service licensed at Rocklin, California (2000 Census population 36,330). Family proposes to change KEBR(AM)'s community of license to Arden-Arcade, California (2000 Census population 96,025) as that community's first local radio transmission service. Family's Section 307(b) analysis indicates that Rocklin will continue to receive protected service<sup>5</sup> from at least five stations.<sup>6</sup>

**Discussion.** *Family Proposal:* Our dismissal of the NCN application in the companion letter issued today<sup>7</sup> resolves all mutual exclusivities, and Family's proposal is no longer mutually exclusive to any other application in MX Group 84-130. We note, however, that our policies on allowing broadcast stations to change their communities of license are based on Section 307(b) and the goals of fair, efficient, and equitable distribution of radio service that underlie it. Our *FM Assignment Policies* delineate three core priorities: provision of first aural reception service to a community, provision of second aural

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<sup>2</sup> See *AM Auction No. 84 Mutually Exclusive Applicants Subject to Auction, Settlement Period Announced for Certain Mutually Exclusive Application Groups; September 16, 2005 Deadline Established for Section 307(b) Submissions*, Public Notice, 20 FCC Rcd 10563 (MB 2005) ("AM MX Public Notice").

<sup>3</sup> See *Auction No. 84 Settlement Period and Section 307(b) Submission Deadline Extended to October 31, 2005*, Public Notice, 20 FCC Rcd 14492 (MB 2005).

<sup>4</sup> 47 C.F.R. § 73.3525(a).

<sup>5</sup> 5mV/m for AM stations and 3.16 mV/m for FM stations.

<sup>6</sup> The Commission has determined that a community receiving service from at least five stations is abundantly served. See, e.g., *James P. Riley, Esq.*, Letter, 6 FCC Rcd 4382 (1991); *National Communications Affiliates of West Virginia*, Order, 2 FCC Rcd 4515 (Rev. Bd. 1987).

<sup>7</sup> See *Letter to Northwest Catholic Network, Inc. and Alexandra Communications*, Reference 1800B3-BSH (MB Jul. 19, 2010).

reception service to a community, and provision of first local transmission service at a community.<sup>8</sup> The fourth priority is “other public interest matters,” which encompasses any other factors that the Commission may take into consideration.<sup>9</sup> Retention of the first local transmission service at Rocklin, and the institution of first local transmission service at Arden-Arcade, implicate Priority (3) -- first local transmission service. However, notwithstanding that the existing and proposed arrangements of stations both trigger the same allotment priority, the Commission prohibits the removal of an existing station representing a community's sole local transmission service.<sup>10</sup> This policy is subject, as are all Commission policies, to waiver under appropriate circumstances.<sup>11</sup> However, the Commission has emphasized that “the fact that a proposal would create a new local service (at the expense of an existing service) is not sufficient, by itself, to warrant a waiver.”<sup>12</sup> Rather, such a proposal “is presumptively contrary to the public interest.”<sup>13</sup> In this regard, the Commission has stated that:

The public has a legitimate expectation that existing service will continue, and this expectation is a factor we must weigh independently against the service benefits that may result from reallocating of a channel from one community to another, regardless of whether the service removed constitutes a transmission service, a reception service, or both. Removal of service is warranted only if there are sufficient public interest factors to offset the expectation of continued service.<sup>14</sup>

Family does not request waiver of this policy, but merely provides a Section 307(b) analysis demonstrating that the population of Arden-Arcade is larger than that of Rocklin. While Arden-Arcade is unquestionably the larger community, and would be preferred if this were a comparison between proposals for new service, this in and of itself does not justify a change of community of license that would deprive the community of Rocklin of a radio service on which it has come to rely for programming serving its needs. The Commission has held that the fact that a licensee proposes to remove a station to a larger community does not by itself justify the removal of a smaller community's sole local broadcast

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<sup>8</sup> See *Revision of FM Assignment Policies and Procedures*, Second Report and Order, 90 FCC 2d 88 (1982). The FM allotment priorities are as follows: (1) First fulltime aural service, (2) Second fulltime aural service, (3) First local transmission service, and (4) Other public interest matters. Co-equal weight is given to Priorities (2) and (3). The FM allotment priorities were first applied to Section 307(b) determinations in mutually exclusive AM proceedings in *Alessandro Broadcasting Co.*, Decision, 56 RR 2d 1568 (Rev. Bd. 1984).

<sup>9</sup> *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d at 93.

<sup>10</sup> *Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License* (“*New Community R & O*”), Report and Order, 4 FCC Rcd 4870 (1989), *recon. granted in part*, Memorandum Opinion and Order, 5 FCC Rcd 7094, 7097 (“*New Community MO&O*”).

<sup>11</sup> *Id.* On waiver standards generally, see *Northeast Cellular Telephone Co. v. F.C.C.*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (“[A] waiver is appropriate only if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest,” citing *WAIT Radio v. F.C.C.*, 418 F.2d 1153, 1157-59 (D.C. Cir. 1969).

<sup>12</sup> *New Community MO&O*, 5 FCC Rcd at 7097.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

service.<sup>15</sup> However, this is the only public interest justification proffered by Family in support of its application. Therefore, we cannot find, on the existing record in this case, that there are sufficient public interest factors to offset the expectation of continued local service at Rocklin, California. Accordingly, we cannot find that the public interest, convenience, and necessity will be served by Family's proposal.

*The Settlement Agreement.* We also dismiss the Settlement Agreement between NCN and Family. Approval of the Settlement Agreement would not serve the public interest primarily because a principal term of the Settlement Agreement requests that we grant Family's Arden-Arcade application. In light of our determination that Family's Arden-Arcade application should not be granted, the Settlement Agreement cannot be fully implemented and we therefore dismiss it.

**Conclusion.** Accordingly, IT IS ORDERED, that the Joint Motion for Approval of Dismissal of Application IS DENIED, the associated Settlement Agreement IS DISMISSED. IT IS FURTHER ORDERED that Family Stations, Inc.'s application for a major modification to change the community of license of Station KBER(AM) to Arden-Arcade, California (File No. BMJP-20040130ASZ) IS DISMISSED.<sup>16</sup>

Sincerely,



Peter H. Doyle *for*  
Chief, Audio Division  
Media Bureau

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<sup>15</sup> See, e.g., *Potts Camp and Saltillo, Mississippi*, Memorandum Opinion and Order, 16 FCC Rcd 16116 (2001) (denying relocation of sole local service at a town of 483 to a town of 1,782).

<sup>16</sup> The corresponding AM Auction 84 technical resolution submission of the applicant, File No. BMJP-20051031AEN, IS ALSO DISMISSED.